

# LAW-MAKING ACTIVITY IN MODERN CONDITIONS: ESSENTIAL DIMENSIONS AND FUNCTIONAL ORIENTATION

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**Annotation.** *The article emphasizes that the effectiveness of state-making processes in any democratic state is determined by a number of factors, among which law-making occupies an important place as one of the main directions of state activity. Law-making is the result of the objective development of social relations, directly aimed at their regulation. The purpose, content and results of law-making activities are determined by various factors. Among them, the following ones are traditionally distinguished: professionalism of law-making subjects and their objectivity; the degree of influence and nature of the interests of individual social groups (the so-called lobbying); level of development of state legal institutions; legal culture of the population; form of government, government and regime; the nature of society's mentality, etc.*

*It is substantiated that law-making is based on law-making policy. The task of law-making policy is to ensure the system, integrity and consistency of legislation, to eliminate gaps in the latter. Attention is drawn to the fact that law-making characterizes the development of law and is a legal form of activity of the state and authorized subjects in the development, adoption, change, suspension and cancellation of legal standards.*

*On the basis of clarifying the essential and meaningful features of law-making functions, their concept was formulated. It is emphasized that the functions of law-making should be understood as the directions of its influence on the development of social relations, which reveal its essence, nature and purpose in society and the state and are aimed at fulfilling certain of its tasks. Particular attention is paid to the types of law-making functions and their features are characterized.*

**Keywords:** *law-making, law-making process, legal regulation, law-making policy, factors influencing law-making, directions of law-making activity, functions of law-making.*

## 1. Introduction.

The phenomenon of the state and the spheres on which it spreads its influence constitutes one of the central issues of state formation at any stage of state development. It is known that the activity of the state is diverse and one of its main directions is law-making. It is with the help of law that the modern state is able to ensure the regulation of social relations, ensure and protect the rights and freedoms of its citizens, and build relations with the international community. The problem of the creation of positive law and the use of its axiological characteristics becomes especially relevant in the conditions of the transformation of social relations that arise as a result of the introduction of an extraordinary legal regime in the state, including - military. Under such conditions, the law-making activity of authorized subjects of state power acquires special features and properties that require scientific understanding, in particular in the aspect of state functionalism.

## 2. Analysis of scientific publications.

The problem we investigated has always been the subject of study by experts in the theory of the state and law. The difficulty lies primarily in the need for a comprehensive approach to the analysis of law-making as one of the areas of state activity. Accordingly, it is necessary to clarify both the theoretical

foundations of the functions, directions, tasks of the state, state authorities, as well as law-making as a category and phenomenon, which is carried out in a state-organized society.

The essential and substantive aspects of law-making, its research as a form of state activity, functions or forms of implementation of functions, etc., have also not been left without attention in both domestic and foreign legal science. Among modern researchers, it is worth mentioning T.O. Didych, D.V. Mazur, V.S. Kovalskyi, I.P. Kozintseva, I.V. Lozynska, N.M. Onishchenko, V.M. Oluyka, V.P. Plavycha, M.O. Teplyuka, V.V. Shishko, O.I. Yushchik and others. At the monographic level, the problem of law-making was analyzed in view of the state of war and during the period of peace-building [1].

Among the researchers who dealt with the issues of state functions, functions of state authorities, the forms of their implementation, and their delimitation: V.E. Sl. Zdioruk, O.M. Balynska, O.G. Varych, V.V. Volynets, O.O. Dzurayev, O.M. Loschykhina, O.A. Marushchak, S.M. Melnychuk, S.M. Oleynikova, M.V. Tsvik, O.V. Petryshyn, V.E. Telipko, R.Ya. Shai and others.

However, the problem of transformation of the content of individual tasks of the state related to legal regulation, legal influence, law-making and law-making has become particularly relevant.

### 3. The aim of the work.

The purpose of this article is to clarify the theoretical foundations of understanding the essence of law-making, factors influencing the law-making process, directions, forms and functions of law-making. Among the tasks that must be solved when analyzing this problem, the following should be singled out: determine the factors affecting the purpose, content and results of law-making activity; pay attention to law-making policy, which creates the necessary conditions for effective law-making activities; find out the main directions and forms of law-making activities; distinguish and give a general description of the main functions of law-making.

### 4. Review and discussion.

The effectiveness of state-making processes in any democratic state is determined by a number of factors, among which law-making takes an important place as one of the main directions of state activity. Currently, the state regime and state administration as a set of means and methods of exercising state power in Ukraine has a complex or dual (hybrid) nature, as it combines the features of the usual democratic and legal regime of martial law. With this in mind, all areas of its activity acquire the same features.

The main directions of the state's activity have an objective nature determined by the needs of society's vital activities, their implementation has a permanent, systemic nature, which occurs during a certain time of the existence of individual tasks that require a general solution on the part of the state, in order to meet the needs of society and its preservation [2].

As an element of legal regulation, law-making is the result of the objective development of social relations, directly aimed at their regulation. The purpose, content and results of law-making activities are determined by various factors objectively existing in society and its various spheres. Among them, the following were traditionally distinguished: professionalism of law-making subjects and their objectivity; the degree of influence and nature of the interests of individual social groups (the so-called lobbying); level of development of state legal institutions; legal culture of the population; form of government, government and regime; the nature of society's mentality, etc. However, the introduction of martial law in Ukraine has made corrections to the specified list.

First of all, it is about bringing the current legislation into line with the objectively existing social relations in view of the occurrence of circumstances caused by the state of war, under which it seems impossible to implement certain provisions of the current legislation and there is a need to introduce new legal means of their regulation. Such a need is conceptualized in the form of a decision by a law-making subject to improve legal regulation by adopting a primary legal act or amending existing legal acts. The subject of law-making is practically forced by the real circumstances of wartime to initiate and implement such a

law-making initiative with the aim of regulating legal influence on social relations. A law-making initiative is preceded by clarifying the need for legal influence and determining the purpose of legal regulation.

It is in accordance with the mentioned conditions that the legislation of Ukraine should be brought, with the exception of the Basic Law, which, according to Article 157 of the Constitution of Ukraine, cannot be changed in conditions of war or emergency.

In view of this, there is a need to develop a law-making policy for the nearest and separate perspective, according to which law-making activity could have a predictable nature both in terms of development and implementation.

Law-making of the state, first of all, is based on the law-making policy, which is part of the official policy of the state, moreover, both internal and external [3]. As a form of legal policy, law-making policy is also characterized by systematicity, concentration, realism, and doctrinality [4]. It is law-making policy that creates the necessary conditions for effective law-making activities. The task of law-making policy, in particular, is to ensure the system, integrity and consistency of legislation, and to eliminate gaps in it. As universal means for achieving the specified tasks, law-making policy uses its inherent basic principles, a systematic approach, information provision of law-making activity, legal techniques, legal acts, etc [5]. Thus, law-making activity is one of the forms of implementation of law-making policy.

One of the goals of law-making policy is to ensure the quality of legislation, which may be complicated in wartime, but remains a primary authority - an obligation of the state legislature. After all, in the conditions of martial law, law-making activity often lacks consistency, systematicity, planning, and stability, which directly affects the quality of legislation and the effectiveness of its implementation.

Accordingly, law-making characterizes the development of law and is a legal form of activity of the state and authorized subjects in the development, adoption, change, suspension and cancellation of legal norms. In addition, law-making is considered as a component of the mechanism of legal regulation.

In the aspect of clarifying the main directions of law-making activities, it is necessary to emphasize that the current system of legislation of Ukraine was formed under conditions of peace and stable development of social relations, both domestic and international, and, as it turned out, does not partially meet the challenges of wartime. First of all, we are talking about the Constitution of Ukraine, the need to improve which has become particularly acute at the moment, however, as noted, it will become possible only after the end of the martial law regime.

It will also be necessary concentrate on the forms of law-making activity, which can be different, including depending on its purpose. This is the so-called current law-making, regulating and systematizing. One of the features of law-making activity at the current stage is the complete predominance of current law-making, which is connected with the extraordinary dynamism of social relations, sometimes unpredictable and unplanned directions of development, new European integration obligations taken by Ukraine in connection with granting it the status of a candidate for membership EU.

Solving urgent problems in the law-making sphere is carried out by implementing the functions of law-making as the main directions of its influence on the development of social relations. It is through the functions that its essence and content are revealed.

In the encyclopedic literature, "functions" are understood as a way (manifestation) of the active and effective existence of a system element, as a result of which other elements of the system as a whole acquire the necessary qualities and make it possible to normally (optimally) exist and function (assert themselves, develop, increase external expansion, carry out own specific functions, etc.)" [6].

Functions are reflected in various spheres of social life, "however, in most cases, the function is associated with the directed influence of the system (structure, whole) on certain aspects of the external environment" [7].

In the dictionary of terms and concepts, law-making functions are considered as "directions of activity related to the establishment, change or cancellation of legal norms, creation and development of legislation" [8].

From the point of view of general theoretical science, the functions of law-making are based on those features that are characteristic of the functions of the state and law in general. An important aspect of this problem is the identification of features of law-making functions that reproduce their most permanent characteristics. Among the features of law-making functions, the following should be noted: first, law-making activities are always aimed at fulfilling certain tasks of the state, the key one of which will be the regulation of social relations through the adoption of relevant legal norms, if necessary, their improvement, elimination of gaps and contradictions, mistakes made in legal norms, ensuring the quality and consistency of legislation adopted by various law-making bodies; secondly, it is a certain set of actions of relevant law-making bodies, civil society. Along with this, law-making bodies establish in the law the methods of regulatory influence by establishing permits, prohibitions or obligations, as well as, if necessary, establish legal benefits and incentives. Also, in the process of law-making, the necessary norms of law are adopted, which fix the rights and obligations of subjects, define the circle of subjects, model their behavior and the objects to which the activities of subjects and their legal regime are directed.

Thirdly, law-making powers are vested with a number of entities that adopt normative legal acts of different legal force, among which the law-making of civil society and the law-making of state bodies are distinguished. Finally, the strategic goal of law-making is the creation of a coherent, high-quality and perfect system of law.

In view of the above, the functions of law-making should be understood as the directions of its influence on the development of social relations, which reveal their essence, nature and purpose in society and the state, aimed at ensuring its tasks.

Considering the peculiarities of law-making functions, let's pay attention to the most important of them, which play an important role in the modern period and will not lose their importance in the future. The majority of scientists attribute to the functions of rule-making: the function of primary regulation of social relations; the function of updating the legal material; the function of filling the gaps in the right; function of codification of normative and legal material [9].

On the other hand, considering the rule-making activity as one of the forms of activity of the public authority, it is possible to single out the functions of primary regulation aimed at the adoption of new legal norms and the regulation of relations that were not regulated before. The functions of secondary regulation include the updating of legal regulation through the introduction of changes and additions to the current regulatory and legal assets, and, if necessary, the cancellation of individual provisions or the adoption of new acts to replace the existing ones [10].

What will be noteworthy is that the analysis of the types of functions of law-making depending on its influence on legal regulation, namely: 1) primary regulation of social relations through the formulation of new legal norms in articles of normative legal acts or normative legal contracts; 2) modification of legal regulation by making changes to the existing legal norms established in normative legal acts and normative legal agreements; 3) termination of legal regulation of certain social relations by canceling certain legal norms. The specified function is performed mainly through the cancellation of a part, or as a whole, of a normative-legal act, a normative-legal contract; 4) filling gaps and eliminating conflicts in legal regulation by formulating legal norms that are not enough to achieve the goal of legal regulation; 5) regularization of legal regulations by systematization of existing regulatory and legal acts" [11].

In our opinion, the functions of law-making should be divided into general and special ones, which to a certain extent can be called not only the functions of law-making, but also the functions of its subjects. First of all, let's pay attention to the general functions.

In the conditions of the war that is currently ongoing in Ukraine, the compensatory and restorative function of the parliament as a subject of law-making or other structures is directly related to the similar function of law and the state, is of great importance and will play a certain role in the post-war period. This function finds its purpose in those cases when the violation or limitation of the rights and freedoms of a person and a citizen cannot be sufficiently ensured by the existing regulatory and legal means. For example, a number of normative legal acts have been adopted or are being prepared, which provide for the possibility of material compensation for persons whose property was destroyed as a result of military aggression, acts of terrorism, sabotage by the aggressor country.

During the period of martial law, the restrictive function of law-making is especially relevant. It is about the adoption of legal acts that limit the rights and freedoms of a person and a citizen under martial law. The issue of legal restrictions is analyzed in foreign and domestic literature fragmentarily through the prism of methods of legal regulation, the choice of which depends on a number of factors of an objective and subjective nature, including: the state of development of society and the state, features of the legal system, certain unfavorable conditions associated with natural disasters, and currently with military actions.

Among other functions of law-making, the ideological one is equally important, it involves filling legal acts with ideas of the integrity of the state and society, giving preference to public interest and needs, but at the same time taking into account private, personal interests, which must be agreed and balanced among themselves. In this context, domestic scientists emphasize that "it is the legal ideology that determines the content of the legal regulation of social relations through the formation of the value content of political and legal thinking and the activity of law-making subjects. The parliament, the government, other public authorities that have law-making powers constitute the political institutions, effectiveness of which depends not only on the formation of the political system, but also on the quality and effectiveness of legislation and the legal system in general" [12].

Among the functions of law-making, it is also necessary to emphasize the stabilization function, which acquires special importance during the period of martial law with the emergence of the need to bring the current legislation to the requirements and realities of today, to ensure national security and defense, which is reflected in the adoption of a number of normative legal acts of an extraordinary nature. A distinctive feature of these acts is "temporary action, their norms are mainly of an imperative nature and include a number of obligations, prohibitions, restrictions; addressees can be both separate categories of natural and legal persons in certain territories, and all those who are under the jurisdiction of the state, etc. [13]

At the same time, during the period of martial law, law-making is characterized as unplanned, the rapid pace of making important legal decisions, the appropriate legal regime is put into effect, general mobilization is introduced, normative acts are adopted that affect the foundations of national resistance, issues of volunteerism, changes are made to labor and criminal legislation, temporarily restrict the constitutional rights and freedoms of citizens, and are generally aimed at ensuring legality and law and order. "In connection with this, the question arises of the objectively determined need to define boundaries and their criteria in the process of a person's realization of his rights and freedoms. Restrictions on the rights and freedoms of citizens bind legal entities within the framework of the interests of society, the state and the individual due to the fact that the legally defined list of restrictions aims to protect the citizen from arbitrary restriction of the right by the state. That is why a compromise is reached between the needs to protect a democratic society and the individual rights of subjects" [14].

The function of overcoming conflict and ensuring compromise in legal standards is also important. One should agree with the opinion of S.V. Bobrovnyk, that a compromise is a means of final conflict resolution established in the form of social agreement and based on mutual concessions, which has a value-orientational character and is the basis for the formation of a democratic regime in society" [15]. Unfortunately, both external and internal legal conflicts may occur in the process of law-making. It is the compromise that is given an important role and importance in the arrangement of conflicts.

The adopted legislation is not always perfect, it is characterized by certain disagreements and contradictions between legal standards. This is primarily due to a large body of legislation adopted at different times, with the need to adopt acts of different legal force that regulate the same relationship, or are regulated by several acts between which conflicts may arise, etc. There is no doubt that law-making has an important place and role in the elimination of conflicts by making changes to those norms that conflict with each other or replacing them with new, more perfect norms.

Among the functions of law-making, the function of overcoming gaps in the law should also be noted. As you know, one of the ways to solve this problem is to use an analogy. Despite the existence of the principle of analogy in law and analogy in law, which are able to temporarily solve this problem, the most optimal option remains the adoption of a new norm that would solve this problem fundamentally and order that group of relations that, due to a number of reasons, remain disordered. It should also be

emphasized that “in the rule-making activities of the Verkhovna Rada of Ukraine, the President of Ukraine and the Government, it is necessary to keep in mind that norms-principles, norms of purposefulness, norms-definitions, reference norms to other laws, when it comes to the constitutional format, as a rule, are considered only as a reference point that requires additional interpretation, and in this process constitutional norms belong to the exclusive competence of the Constitutional Court of Ukraine” [16].

The rapid development of social relations often leads to the “aging” of the normative array, its inconsistency with objectively existing realities. In addition, in the process of law-making, a large number of normative legal acts are adopted, some provisions of which are duplicated, unsystematic and such that they have lost their weight and significance. Accordingly, there is a need to systematize regulatory legal acts. As you know, the systematization of legislation is aimed at its organization, giving it systemic approach, clarity, ease of use, elimination of errors, duplications, overcoming collisions, inconsistencies in the regulatory array. This is also one of the functions of law-making.

## 5. Conclusions.

Law-making characterizes the development of law and is a legal form of activity of the state and authorized subjects in the development, adoption, change, suspension and cancellation of legal norms. The purpose, content and results of law-making activity are determined by various factors objectively existing in society, in its various spheres.

Law-making activities are carried out in various forms. Depending on their purpose, the so-called current law-making, streamlining and systematization are distinguished. One of the features of law-making activity at the current stage is the complete predominance of current law-making.

The functioning of law-making subjects is their activity within the limits of the constitutionally defined powers, and the functions of law-making are the directions of its influence on social relations in relation to solving certain tasks, achieving the goal of the state both now and in the future.

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